



750 BERING DRIVE
HOUSTON, TX 77057-2198
PHONE 713.787.1400
FAX 713.787.1440
A LIMITED LIABILITY PARTNERSHIP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: K. Gifford Goodhue, Jr.;
Max M. Holmes; Clinton Scott Norman; John M.
Wilkerson, III;

Serial No.: 09/880,409

Confirmation No.:

Filed: June 13, 2001

For: COMPOSITION AND METHOD FOR A DUAL-
FUNCTION SOIL-GROUTING EXCAVATING OR
BORING FLUID

Group Art Unit:

Examiner: Not Assigned

Atty. Dkt. No.: 11084.0015.CPUS00
GOOD:015--1

PETITION UNDER 37 C.F.R. § 1.47(b)

Commissioner for Patents
Washington, D.C. 20231

| EXPRESS MAIL MAILING LABEL | |
|---|---------------|
| NUMBER | EL830940644US |
| DATE OF DEPOSIT | 8 Feb 02 |
| I hereby certify that this paper or fee is being deposited with the United States Postal Service "EXPRESS MAIL POST OFFICE TO ADDRESSEE" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to: Commissioner for Patents, Washington D.C. 20231. | |
| Signature | |

A Notification of Missing Requirements under 35 U.S.C. §371 for the above-captioned application was mailed on August 3, 2000, requiring the oath or declaration of the inventors be furnished with the associated surcharge. One of the joint co-inventors, Mr. Max M. Holmes, was an employee of the Assignee, K B Technologies Ltd. at the time the invention was made; however, Mr. Holmes is no longer employed by K B Technologies Ltd.

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Applicant: GOODHUE et al.
Atty. Ref.: 11084.0015.CPUS00

Attempts to secure the inventors' execution of the declaration have resulted in the inventors' refusal to sign. The inventors are obligated to assign the invention to K B Technologies Ltd. by virtue of their employment contracts with K B Technologies Ltd. Failure to timely respond to the Notification of Missing Requirements under 35 U.S.C. 371 will result in abandonment of the U.S. National stage application, causing irreparable damage to K B Technologies Ltd. Therefore, K B Technologies Ltd. hereby petitions under 37 C.F.R. 1.47(b) and 35 U.S.C. 118 to execute the declaration for the above-identified application on behalf of and as agent for the inventor.

The following documents are filed in support of this petition:

1. Declaration of inventorship by K B Technologies Ltd. made on behalf of Mr. Holmes;
2. Statement establishing proprietary interest; and
3. Declaration of Mr. Robert Jennejahn regarding inventor's refusal to sign.

The last known addresses of the non-signing inventor is as follows:

Max M. Holmes,
31334 Bearing Star Lane
Tomball, TX 77375
United States of America

The Petition Fee of \$130.00 is to be charged as indicated on enclosed FORM 2038. Should any fee under 37 C.F.R. §§ 1.16 to 1.21 be deemed necessary for any reason relating to this document, the Assistant Commissioner is hereby authorized to deduct said fee from Howrey Simon Arnold & White Deposit Account No. 01-2508/GOOD:015.



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STATEMENT ESTABLISHING PROPRIETARY INTEREST
IN SUPPORT OF PETITION UNDER 37 C.F.R. § 1.47(b)

Commissioner for Patents
Washington, D.C. 20231

I, K. Gifford Goodhue Jr., Partner of K B Technologies Ltd, am the person signing the declaration on the above identified application on behalf of the inventor, Max M. Holmes, and make this statement as to the facts establishing the proprietary interest of K B Technologies Ltd.

1. I have read the above-identified specification and claims.
2. In accordance with Max M. Holmes' signed contract of employment, the Mr. Holmes has agreed to vest any invention conceived during his period of employment to K B Technologies Ltd. Copies of the signed contract of employment are attached as Exhibit A.
3. Based on my first hand knowledge and based on information and belief made after a reasonable inquiry and review of the materials available to me, I hereby state that the inventor, Max M. Holmes, made his inventive contributions to the above-identified invention while in the



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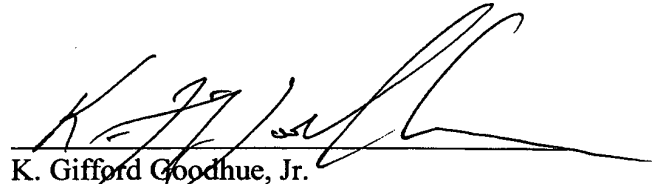
Applicant: K. Gifford Goodhue, Jr.; Max M. Holmes;
Clinton Scott Norman; John M. Wilkerson, III;
Atty. Ref.: 11084.0015.CNUS02

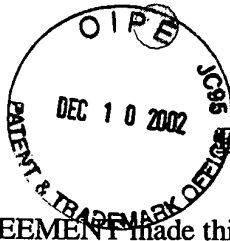
employ of K B Technologies Ltd, and that the invention was made in the course of the inventors' normal duties. In accordance with the terms of Mr. Holmes' signed contract of employment, Mr. Holmes has agreed to vest the invention in K B Technologies Ltd..

4. In accordance with 37 C.F.R. § 3.73, I hereby state that the evidentiary documents with respect to K B Technologies Ltd. ownership have been reviewed and that, to the best of my knowledge and belief, equitable title is in the assignee seeking to take this action.

5. I hereby declare that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

FEB 7 2002
Date


K. Gifford Goodhue, Jr.
Partner, K B Technologies Ltd.



EMPLOYMENT AGREEMENT

AGREEMENT made this 1st day of December, 1998, between KB Technologies, Ltd. (herein called "KB") and Max M. Holmes (herein called the "Employee").

WITNESSETH:

FIRST: KB agrees to employ the Employee and the Employee accepts the employment and agrees to devote all of his/her full business time and efforts to the business of KB, on the terms and conditions hereinafter set forth.

SECOND: The employment hereunder shall be for six months from the date of this Agreement and thereafter until terminated by written notice given by either party to the other not less than two weeks prior to the date of termination specified in such notice. Such notice may be given by KB or by the Employee for any reason whatever and with or without good cause. No notice of termination shall be required, however, by either party where there has been a breach of this Agreement by the other party. KB may, with or without cause relieve the Employee of all duties all or part of any notice period, but the compensation of the Employee for such period shall nonetheless be paid.

THIRD: KB and the Employee have agreed upon the Employee's compensation. The Employee's compensation may be changed by KB upon one month's written notice to the Employee, except that no notice shall be required for a change which results in an increase in compensation and except further that notice shall be deemed waived in each case that the compensation under the changed basis has been accepted and retained by the Employee for one month.

FOURTH: A. The successful development and marketing of KB's products and services requires substantial time and expense including the diligent and coordinated efforts of all personnel. Those efforts generate for KB valuable and proprietary information, herein called "confidential information", which gives KB a commercial advantage over others who do not have such information. Confidential information shall include but not be limited to consulting and presentation formats, manufacturing methods, processes and procedures, whether used for special or general purposes, and the methods and products developed in KB's efforts to satisfy the needs of its customers; KB's customer, client and associate relationships; or any combination of the foregoing. During his/her employment, the Employee will obtain knowledge of confidential information that has been and will continue to be generated for the commercial advantage and at the expense of KB. With this in mind the Employee and KB agree that the following obligations to be undertaken by the Employee are reasonably designed to protect KB's confidential information without unnecessarily or unreasonably restricting the post-employment commercial opportunities of the Employee:

1. Upon termination for any reason of his/her employment with KB, the Employee shall not take with him/her anything belonging to KB, including without limitation, any notes, records, charts, formulas or other documents or things containing in whole or in part any of KB's confidential information; nor shall the Employee thereafter use or disclose to any person, without the prior written approval of KB, any confidential information (including for this purpose information received by the Employee in confidence from others) unless at that time the information has become generally and lawfully known to others.

2. Without limiting the obligations of subparagraph A.1 of this paragraph FOURTH, for a period of fifteen months after the termination for any reason of his/her employment with KB, which employment has been of at least six months' duration, the *employee*

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shall not for himself/herself or as agent, partner or employee of any person, firm or corporation, engage in any activity in connection with the development, manufacture, ~~use~~ or sale of a competitive product (as hereinafter defined) which is likely to involve the disclosure or use by the Employee of KB's confidential information. A competitive product shall mean any product of a type sold or usable for substantially the same purposes as a product manufactured, developed or sold at any time for KB by the Employee, or by another employee of KB acting under the Employee's supervision or with his/her assistance. MA
KB

3. During the first fifteen months following the termination for any reason of his/her employment with KB, the Employee shall keep KB currently advised in writing of the name and address of each business organization for which the Employee acts as agent, partner, representative or employee.

B. Subject to the obligations undertaken by the Employee in sub paragraph A.1 through A.3, nothing in this paragraph FOURTH shall prevent the Employee from pursuing any commercial activity either for himself/herself or as agent, partner or employee of any other person, firm or corporation following the termination for any reason of his/her employment with KB.

C. 1. None of the obligations undertaken by the Employee pursuant to this paragraph FOURTH shall derogate in any way from his/her contractual and fiduciary obligations during his/her employment by KB to serve its interests with undivided loyalty.

2. During the first fifteen months following, the termination for any reason of his/her employment with KB, the Employee shall not induce or assist in the inducement of any KB employee away from KB's employ or from the faithful discharge of his/her contractual and fiduciary obligations to serve KB's interests with undivided loyalty.

FIFTH: A. Any invention or improvement made or conceived by the Employee during his/her employment (whether during or after working hours) relating to any of KB's products or any products in the process of development by KB, or any similar or competitive products, or to the method of making or using any such products, or relating in any other manner to KB's business, shall be promptly disclosed in writing by the Employee to KB and shall be the sole property of KB. Upon KB's request (whenever made) the Employee shall execute and assign to KB applications for letters patent for the United States and such foreign countries as KB may designate and shall execute and deliver to KB such other instruments as KB deems necessary for it to obtain such letters patent and all rights therein. For each such invention KB shall pay to the Employee \$50 upon the assignment of the application for a United States patent thereon (all assignments of amended applications and all applications for foreign countries to be made without further payment) and \$50 upon the issuance of such United States patent. Any invention or improvement made or disclosed by the Employee to anyone within fifteen months after the termination of his/her employment with KB shall be refutably presumed to have been made or conceived during his/her employment hereunder.

B. The Employee is not obligated to assign to KB the Employee's right in an invention for which no equipment, supplies, facility or trade secret information of KB was used and which was developed entirely on the Employee's own time, and (1) which does not relate to the business of KB or to KB's research and development programs, or (2) does not result from any work performed by the Employee for KB.

SIXTH: Each reference in this Agreement to "KB" shall include its successors and any past, present or future subsidiary and any corporation which KB has or may in the future merge or consolidate.

SEVENTH: All notices shall be in writing. Notices intended for KB shall be sent by registered or certified mail addressed to it at its principal office, and notices intended for the Employee shall be either delivered personally to him/her or sent by registered or certified mail addressed to his/her last known address.

EIGHTH: This instrument contains the entire agreement between the parties and no oral or written agreements, promises or representations made by the Employee or by KB, whether in employment interviews, company, manuals, policies or procedures, or otherwise, modify this Agreement. No modifications shall be binding except by a written instrument signed by both parties.

NINTH: Any employment agreement heretofore made by the parties hereto is hereby terminated. Any reference, however, to dealing or transacting business with customers of KB, or to inventories, or improvements made or conceived during the Employee's employment, shall include dealings and transactions and inventions and improvements made or conceived during any period of his/her employment, whether prior to or subsequent to the date of this Agreement.

TENTH: In the event that any provision of this Agreement is determined by a court of competent jurisdiction to be void or unenforceable, the Employee and KB agree that such provision shall be enforced to the extent reasonable under the circumstances and that all other provisions shall be enforceable to the fullest extent permissible by law.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

EMPLOYEE: 

KB Technologies, Ltd.

By: 



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: K. Gifford Goodhue, Jr.;
Max M. Holmes; Clinton Scott Norman; John M.
Wilkerson, III;

Serial No.: 09/880,409

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Filed: June 13, 2001

For: COMPOSITION AND METHOD FOR A DUAL-
FUNCTION SOIL-GROUTING EXCAVATING OR
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Group Art Unit:

Examiner: Not Assigned

Atty. Dkt. No.: 11084.0015.CPUS00
GOOD:015--1

INVENTOR'S DECLARATION MADE ON BEHALF OF A NON-SIGNING INVENTOR
IN SUPPORT OF PETITION UNDER 37 C.F.R. § 1.47(b)

Commissioner for Patents
Washington, D.C. 20231

I, K. Gifford Goodhue, Jr. hereby declare that:

1. I am authorized by the following person or juristic entity with sufficient
proprietary interest (see Statement establishing proprietary interest filed herewith):

K B Technologies Ltd.
5510 Autumn Breeze Court
Spring, TX 77379

2. I am an officer of K B Technologies Ltd. My position is Partner.

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Applicant: K. Gifford Goodhue, Jr.; Max M. Holmes;
Clinton Scott Norman; John M. Wilkerson, III;
Atty. Ref.: 11084.0015.CNUS02

3. By virtue of K B Technologies' proprietary interest, I sign this declaration on behalf of, and as agent for Max M. Holmes, a non-signing inventor.

4. Upon information and belief, I aver those facts that the inventor is required to state, 37 C.F.R §1.64(b). Namely, that:

(a) The inventor's name, last known residential and post office addresses and citizenship are as follows

Full Name: Max M. Holmes
Residence Address: 31334 Bearing Star Lane
Tomball, TX 77375
United States of America
Post Office Address: same as residence address
Country of Citizenship: United States of America

(b) I believe that Max M. Holmes was an original, joint inventor of the subject matter which is claimed and for which a patent is sought in U.S. Application Serial No. 09/880,409; filed June 13, 2001 and entitled "Composition and Method for a Dual-Function Soil-Grouting Excavating or Boring Fluid".

(c) I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims.

(d) I acknowledge the duty to disclose to the Patent and Trademark Office all information known to us to be material to patentability of the subject matter claimed in this application, as "materiality" is defined in Title 37, Code of Federal Regulations, § 1.56.



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(e) I hereby claim domestic priority benefits under 35 U.S.C. §120 of co-pending U.S. application number 09/023,150 filed on February 12, 1998.

(f) I acknowledge the duty to disclose to the Patent and Trademark Office all information known to us to be material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56, which became available between the filing date of the international application and the national filing date of this application.

(g) I hereby declare that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

5. I hereby appoint Stephen H. Cagle, Reg. 29,775, and Carter J. White, Reg. No. 41,374, each an attorney of the firm of HOWREY SIMON ARNOLD & WHITE, LLP, as K B Technology's attorneys with full power of substitution and revocation, to prosecute the application, to make alterations and amendments therein, to transact all business in the Patent and Trademark Office in connection therewith, and to receive any Letters Patent, and for one year after issuance of such Letters Patent to file any request for a certificate of correction that may be deemed appropriate. Please direct all correspondence to:



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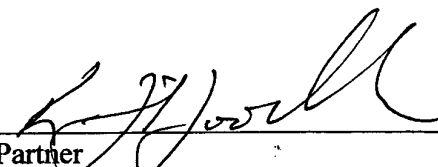
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Stephen H. Cagle
Howrey Simon Arnold & White, LLP
750 Bering Dr.
Houston, Texas 77057
(713)-787-1448.

K. Gifford Goodhue, Jr.

FEBRUARY 7, 2002

Date


Partner
K B Technologies Ltd.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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**DECLARATION OF ROBERT JENNEJAHN
IN SUPPORT OF PETITION UNDER 37 C.F.R. § 1.47(b)**

Commissioner for Patents
Washington, D.C. 20231

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I, Robert Jennejahn, hereby declare the following:

1. I am currently employed as the President of the Civil Engineering Division of K B Technologies Ltd. At the time of the following occurrences, I was employed as the Vice-President of K B Technologies Ltd.

2. On or about August 24, 2001 I contacted Mr. Max M. Holmes by telephone and indicated to him that I was forwarding to Mr. Holmes the inventor's declaration and power of attorney, and assignment documents requesting review and execution by Mr. Holmes. Mr. Holmes was non-responsive to my request that he review and execute these documents in fulfillment of his obligations under his prior employment agreement with K B Technologies Ltd. attached as Exhibit A. Mr. Holmes indicated to me only that it "OK" for me to send the



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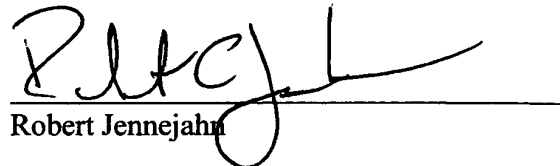
documents to him. During my telephone conversation with Mr. Holmes, I confirmed with Mr. Holmes that his correct mailing address was: 31334 Bearing Star Lane, Tomball, TX 77375.

3. On or about August 24, 2001 I signed a letter addressed to Mr. Max M. Holmes including an inventor's declaration and power of attorney, and assignment documents requesting review and execution by Mr. Holmes. The letter to Mr. Holmes was sent by U.S. Certified Mail, Return Receipt Requested to the address that Mr. Holmes confirmed as being his then current mailing address. Copies of the August 24, 2001, the mailing envelope and letter and enclosed documents are attached as Exhibits B and C respectively.

4. On or about September 14, 2001, the U.S. Postal Service returned the above noted letter and documents, still sealed in their envelope, as unclaimed mail. This fact was brought to my attention and I concluded from the return of the letter and enclosed materials that Mr. Holmes refused to receive the letter and documents despite the notices provided by the U.S. Postal Service.

5. I hereby declare that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2/7/02
Date


Robert Jennejahn



EMPLOYMENT AGREEMENT

AGREEMENT made this 1st day of December, 1998, between KB Technologies, Ltd. (herein called "KB") and Max M. Holmes (herein called the "Employee").

WITNESSETH:

FIRST: KB agrees to employ the Employee and the Employee accepts the employment and agrees to devote all of his/her full business time and efforts to the business of KB, on the terms and conditions hereinafter set forth.

SECOND: The employment hereunder shall be for six months from the date of this Agreement and thereafter until terminated by written notice given by either party to the other not less than two weeks prior to the date of termination specified in such notice. Such notice may be given by KB or by the Employee for any reason whatever and with or without good cause. No notice of termination shall be required, however, by either party where there has been a breach of this Agreement by the other party. KB may, with or without cause relieve the Employee of all duties all or part of any notice period, but the compensation of the Employee for such period shall nonetheless be paid.

THIRD: KB and the Employee have agreed upon the Employee's compensation. The Employee's compensation may be changed by KB upon one month's written notice to the Employee, except that no notice shall be required for a change which results in an increase in compensation and except further that notice shall be deemed waived in each case that the compensation under the changed basis has been accepted and retained by the Employee for one month.

FOURTH: A. The successful development and marketing of KB's products and services requires substantial time and expense including the diligent and coordinated efforts of all personnel. Those efforts generate for KB valuable and proprietary information, herein called "confidential information", which gives KB a commercial advantage over others who do not have such information. Confidential information shall include but not be limited to consulting and presentation formats, manufacturing methods, processes and procedures, whether used for special or general purposes, and the methods and products developed in KB's efforts to satisfy the needs of its customers; KB's customer, client and associate relationships; or any combination of the foregoing. During his/her employment, the Employee will obtain knowledge of confidential information that has been and will continue to be generated for the commercial advantage and at the expense of KB. With this in mind the Employee and KB agree that the following obligations to be undertaken by the Employee are reasonably designed to protect KB's confidential information without unnecessarily or unreasonably restricting the post-employment commercial opportunities of the Employee:

1. Upon termination for any reason of his/her employment with KB, the Employee shall not take with him/her anything belonging to KB, including without limitation, any notes, records, charts, formulas or other documents or things containing in whole or in part any of KB's confidential information; nor shall the Employee thereafter use or disclose to any person, without the prior written approval of KB, any confidential information (including for this purpose information received by the Employee in confidence from others) unless at that time the information has become generally and lawfully known to others.

2. Without limiting the obligations of subparagraph A.1 of this paragraph FOURTH, for a period of fifteen months after the termination for any reason of his/her employment with KB, which employment has been of at least six months' duration, the employee

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shall not for himself/herself or as agent, partner or employee of any person, firm or corporation, engage in any activity in connection with the development, manufacture, ~~use~~ or sale of a competitive product (as hereinafter defined) which is likely to involve the disclosure or use by the Employee of KB's confidential information. A competitive product shall mean any product of a type sold or usable for substantially the same purposes as a product manufactured, developed or sold at any time for KB by the Employee, or by another employee of KB acting under the Employee's supervision or with his/her assistance. MA
KB

3. During the first fifteen months following the termination for any reason of his/her employment with KB, the Employee shall keep KB currently advised in writing of the name and address of each business organization for which the Employee acts as agent, partner, representative or employee.

B. Subject to the obligations undertaken by the Employee in sub paragraph A.1 through A.3, nothing in this paragraph FOURTH shall prevent the Employee from pursuing any commercial activity either for himself/herself or as agent, partner or employee of any other person, firm or corporation following the termination for any reason of his/her employment with KB.

C. 1. None of the obligations undertaken by the Employee pursuant to this paragraph FOURTH shall derogate in any way from his/her contractual and fiduciary obligations during his/her employment by KB to serve its interests with undivided loyalty.

2. During the first fifteen months following, the termination for any reason of his/her employment with KB, the Employee shall not induce or assist in the inducement of any KB employee away from KB's employ or from the faithful discharge of his/her contractual and fiduciary obligations to serve KB's interests with undivided loyalty.

FIFTH: A. Any invention or improvement made or conceived by the Employee during his/her employment (whether during or after working hours) relating to any of KB's products or any products in the process of development by KB, or any similar or competitive products, or to the method of making or using any such products, or relating in any other manner to KB's business, shall be promptly disclosed in writing by the Employee to KB and shall be the sole property of KB. Upon KB's request (whenever made) the Employee shall execute and assign to KB applications for letters patent for the United States and such foreign countries as KB may designate and shall execute and deliver to KB such other instruments as KB deems necessary for it to obtain such letters patent and all rights therein. For each such invention KB shall pay to the Employee \$50 upon the assignment of the application for a United States patent thereon (all assignments of amended applications and all applications for foreign countries to be made without further payment) and \$50 upon the issuance of such United States patent. Any invention or improvement made or disclosed by the Employee to anyone within fifteen months after the termination of his/her employment with KB shall be refutably presumed to have been made or conceived during his/her employment hereunder.

B. The Employee is not obligated to assign to KB the Employee's right in an invention for which no equipment, supplies, facility or trade secret information of KB was used and which was developed entirely on the Employee's own time, and (1) which does not relate to the business of KB or to KB's research and development programs, or (2) does not result from any work performed by the Employee for KB.

SIXTH: Each reference in this Agreement to "KB" shall include its successors and any past, present or future subsidiary and any corporation which KB has or may in the future merge or consolidate.

SEVENTH: All notices shall be in writing. Notices intended for KB shall be sent by registered or certified mail addressed to it at its principal office, and notices intended for the Employee shall be either delivered personally to him/her or sent by registered or certified mail addressed to his/her last known address.

EIGHTH: This instrument contains the entire agreement between the parties and no oral or written agreements, promises or representations made by the Employee or by KB, whether in employment interviews, company, manuals, policies or procedures, or otherwise, modify this Agreement. No modifications shall be binding except by a written instrument signed by both parties.

NINTH: Any employment agreement heretofore made by the parties hereto is hereby terminated. Any reference, however, to dealing or transacting business with customers of KB, or to inventories, or improvements made or conceived during the Employee's employment, shall include dealings and transactions and inventions and improvements made or conceived during any period of his/her employment, whether prior to or subsequent to the date of this Agreement.

TENTH: In the event that any provision of this Agreement is determined by a court of competent jurisdiction to be void or unenforceable, the Employee and KB agree that such provision shall be enforced to the extent reasonable under the circumstances and that all other provisions shall be enforceable to the fullest extent permissible by law.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

EMPLOYEE: 

KB Technologies, Ltd.

By: 